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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 120330236-2236-02]

RIN 0648-BB48

Western Pacific Pelagic Fisheries; Revised Swordfish Trip Limits  
in the Hawaii Deep-set Longline Fishery

AGENCY: National Marine Fisheries Service (NMFS), National  
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to revise the limits on  
the number of swordfish that fishermen may possess or land  
during any given Hawaii-based deep-set longline-fishing trip  
north of the Equator. This rule also revises the definition of  
deep-set longline fishing to be consistent with the swordfish  
retention limits. The rule intends to reduce regulatory discards  
and optimize the yield of swordfish.

DATES: This rule is effective [insert date 30 days after  
publication in the FEDERAL REGISTER].

ADDRESSES: NMFS and the Western Pacific Fishery Management  
Council (Council) prepared a regulatory amendment, including an  
environmental assessment and regulatory impact review, that  
provides background information on this rule. The regulatory

amendment, identified by identified by NOAA-NMFS-2012-0097, is available from [www.regulations.gov](http://www.regulations.gov), or from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, [www.wpcouncil.org](http://www.wpcouncil.org).

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, Sustainable Fisheries, NMFS PIR, 808-944-2272.

SUPPLEMENTARY INFORMATION: Fishermen in the Hawaii-based deep-set longline fishery have been subject to a limit of 10 swordfish per fishing trip, a limit implemented to discourage shallow-set fishing during a declared deep-set fishing trip. The limit has occasionally forced fishermen to discard swordfish caught in excess of the limit. Fishermen have claimed that, because swordfish stocks are healthy and are not subject to overfishing or approaching an overfished condition, the discards amount to wasted opportunities to sell the excess swordfish, resulting in lost wages and a reduction of the fish supply to seafood consumers.

In response to fishermen's concerns, and based on a recommendation from the Council, NMFS revises the limits on the number of swordfish that may be possessed or landed during a deep-set longline fishing trip north of the Equator. The new limits are, as follows:

- With a NMFS observer on board, there is no limit on swordfish landed or possessed on a trip, regardless of the type of hook used.
- With no NMFS observer on board, the limit is 25 swordfish landed or possessed on a trip, if the vessel uses only circle hooks.
- With no NMFS observer on board, and if the vessel uses any hooks other than circle hooks, the limit is 10 swordfish landed or possessed on a trip.

This rule reduces regulatory discards, and optimizes swordfish yield. This rule supports the National Standards for fishery management in Magnuson-Stevens Fishery Conservation and Management Act, and maximizes the net benefits to the Nation.

This rule also revises the definition of deep-set longline fishing to remove the provision regarding swordfish limits from the definition. This change makes the definition consistent with the revised swordfish retention limits.

This rule is consistent with a final rule issued by NMFS on March 19, 2012 (77 FR 15973) that implemented similar limits on the possession and landing of swordfish for longline fishing off the U.S. west coast.

#### Comments and Responses

On June 11, 2012, NMFS published a proposed rule and request for public comment (77 FR 34331). The comment period for

the proposed rule ended on July 2, 2012. NMFS received one set of comments that were supportive of the action for the reasons outlined in the preamble of the proposed rule. NMFS did not receive any negative comments on, or suggested changes to, the proposed rule.

#### Changes from the Proposed Rule

There are no changes to the proposed rule.

#### Classification

The Administrator, Pacific Islands Region, NMFS, determined that this action is necessary for the conservation and management of pelagic fisheries in the western Pacific, and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, Fisheries, Fishing,  
Hawaii, Longline, Sea turtles, Swordfish.

Dated: July 20, 2012

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Alan D. Risenhoover,  
Director, Office of Sustainable Fisheries,  
performing the functions and duties of the  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is  
amended as follows:

PART 665--FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for part 665 continues to read as  
follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 665.800, revise the definition of "Deep-set or  
Deep-setting" to read as follows:

§ 665.800 Definitions.

\* \* \* \* \*

Deep-set or Deep-setting means the deployment of longline gear in a manner consistent with all the following criteria: All float lines are at least 20 meters in length; a minimum of 15 branch lines are attached between any two floats (except basket-style longline gear which may have as few as 10 branch lines between any two floats); and no light sticks are used. As used in this definition, "float line" means a line used to suspend the main longline beneath a float, and "light stick" means any type of light emitting device, including any fluorescent "glow bead," chemical, or electrically-powered light that is affixed underwater to the longline gear.

\* \* \* \* \*

3. In § 665.813, revise paragraph (j) to read as follows:

§ 665.813 Western Pacific longline fishing restrictions.

\* \* \* \* \*

(j) Swordfish limits. When fishing north of the Equator (0° lat.), owners and operators of vessels registered for use under a Hawaii longline limited access permit, on a trip for which the permit holder notified NMFS under §665.803(a) that the vessel would deep-set, may possess or land no more than the following number of swordfish for such trip:

(1) If an observer is on board, there is no limit.

(2) If there is no observer on board, and if only circle hooks are used, the limit is 25.

(3) If there is no observer on board, and if any type of hook other than a circle hook is used, the limit is 10.

\* \* \* \* \*

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